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PATENT APPLICATION

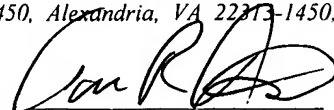
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jon N. Swanson
Serial No.: 10/730,510
Conf. No.: 2343
Filed: December 8, 2003
For: PRIMARY DATA STREAM
COMMUNICATION
Art Unit: 2614
Examiner: Elahee, MD S.

I hereby certify that this paper is being deposited with the United States Postal Service as FIRST-CLASS mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this date.

May 26, 2009

Date


Registration No. 40,607
Attorney for Applicant(s)

Pre-Appeal Brief Request for Review

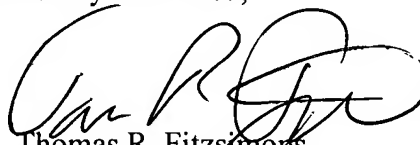
Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests a pre-appeal review of the outstanding final rejections of the pending claims in this application based upon the attached remarks.

Respectfully submitted,

By


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Pre-Appeal Brief Request for Review Remarks

An inadequate examination is demonstrated by the record of this prosecution and, in particular, unsupported misrepresentations of the applied prior art that can only be based upon a careless or cursory review of the applied prior art and application. No genuine factual dispute is shown in the record. Requirements of the law of obviousness are not met. Fairness dictates that the rejections be withdrawn and the application allowed without subjecting applicant to the delay and expense of a full appeal in a case that has already had a five-year pendency.

The Application should be allowed on pre-appeal because the rejections involve misrepresenting the art, and no genuine factual dispute is raised by the unsupported allegations concerning the content of the applied references. The record includes multiple inaccurate explanations of the art that do not show a factual dispute. Citations to the art have been made which are simply not supported.

A. No Prima Facie Case of Obviousness has been Established.

Independent claims 1, 19 and 20 stand rejected as obvious over Henrikson in combination one or more of Chang, Potekhin, and / or Jang. To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. No prima facie case of obviousness has been established for these rejections.

A.1 Chang Fails to Disclose Each Participant Communicating a Plurality of Discrete Video Streams as Recited by Claim 1

Claim 1 stands rejected as obvious over Henrikson in view of Chang and further in view of Potekhin. Among other elements, claim 1 recites “communicating a plurality of discrete real time video data streams from each of the plurality of attendees to all others of the plurality of attendees ...” That is, each meeting attendee communicates a *plurality* of video data streams. The Final Action admits that Henrikson and Potekhin fail to disclose this, and cites Chang for this. Chang, however, merely discloses that conference call attendees can have a video image associated with their audio. Abstract. Although admittedly call attendees may see video images of multiple other call participants, each caller only communicates a single video image to other participants: “A video display or photographic image of the speaking call participant may selectively appear on the terminal screen 18 for the non-speaking conference call participants ...” col. 4, lines 4-8. Each participant, however, does not communicate a plurality of video streams to all other participants. Claim 1 is therefore allowable.

A.2 Henrikson Fails to Teach an Attendee Communicating a Primary Selection Command that is Received by Other Attendees, but Instead Teaches that the Loudest Audio Stream is Centrally Selected as the Primary Stream

Each of independent claims 1, 19 and 20 recite that an attendee communicate a primary selection command that is received by at least a portion of the plurality of other attendees, and that the other attendees use the primary selection command to identify (claims 1 and 20) or to recognize (claim 19) a primary video stream. As with previous Office Actions, the Final Action cites Henrikson for this teaching. Amendment B argued that this was incorrect. The Final Action merely maintains the previous rejection without comment on this argument.

As explained in Amendment B, in the embodiment of each independent claim at least one attendee “decides” which video stream will be the primary stream and communicates a corresponding primary selection command to other attendees. Those other attendees then use the command to identify / recognize the primary video stream. This defines a distributed system where attendees make decisions concerning the primary video stream as opposed to Henrikson’s centralized system where primary stream selection is made centrally based on the loudest stream. The Final Action cites col. 5, lines 20-24 of Henrikson. However, this simply teaches that the primary stream is selected at the central node 124 (based on the dominant or loudest speaker) and then sent to attendees.

As pointed out in Amendments A and B, Henrikson teaches primary stream selection occur at a centralized media resource node 124:

In accordance with the present invention, the audio packets received from conference participants (by media resource node 124) are analyzed to select the primary video image for display. ...If a particular participant is dominating the audio portion of the conference (206), **then the primary video image that is sent to all participants is selected based on the participant dominating** (the audio)..

col. 4, line 52 – col. 5, line 23 (emphasis added). Also, “(m)ost preferably, **the loudest audio signal is used to select the primary video image**. The primary video image **is typically a video image of the loudest speaker**” col. 5, lines 63-65 (emphasis added). This is very different from the claimed distributed configuration where primary stream selection and identification tasks are communicated from conference attendees and are not necessarily limited to corresponding to the loudest stream. The rejection of claims 1, 19 and 20 is therefore improper.

A.3 Potekhin Fails to Teach Attendees Storing a Primary Selection Command in a Memory as Required by Claim 1

Claim 1 further requires that one of the attendees communicate a primary selection command that is received by at least a portion of the plurality of attendees and stored in a memory by each of the portion of attendees. The Final Action admits that Henrikson and Chang fail to disclose this element, but cites column 7, lines 54-67 of Potekhin for this. This portion of Potekhin states, in pertinent part, that the “audio controller 440 stores control information.” It is submitted that this is insufficient to meet the recitation. Accepting only for sake of argument the Office Action’s argument that Potekhin’s “control information” can be considered to be a “primary selection command,” the cited portion of Potekhin fails to teach that the command is received and/or stored in a memory *by a plurality of the attendees*. Instead, it is executed and stored at central audio controller 440 (which is part of central MCU 400 – see FIG. 4). This is still another reason that claim 1 is allowable. It is noted that the above argument was made in Amendment B, but that the Final Action fails to address it in any manner.

A.4 Chang Fails to Disclose the Recited First and Second Primary Streams of Claim 20

Independent claim 20 is allowable for other reasons in addition to those set out above. For example, claim 20 recites that first and second primary video data stream identifiers are communicated to a plurality of users wherein each of the plurality of users thereby receives two different primary video data stream identifiers and two different primary streams selected from a plurality of other streams at the same time. The Final Action admits that Henrikson and Potekhin fail to teach this, but instead cites Chang. Accepting only for the sake of argument that Chang may disclose communicating a primary stream by highlighting an image of a speaking call participant, this falls short of teaching two different primary streams selected from a plurality of other streams. This is another reason for the allowability of claim 20.

B. Multiple Dependent Claims are Allowable on Other Basis

Multiple of the dependent claims are allowable for additional reasons. Claim 23, for example, depends from claim 1 and further recites that the primary selection command be stored on a memory in a computer at each of the attendees. Claim 23 stands rejected as obvious over Henrikson in view of Potekhin. Neither Henrikson nor Potekhin, however, disclose this feature. Henrikson’s central media resource node 124 identifies the primary stream based on

audio volume (col. 4, lines 45-50), and Potekhin teaches that selection commands are stored on a centrally located MCU 400. FIG. 4. In rejecting claim 23, the previous Office Action simply states that the claim is rejected "...for the same reasons as are claims 1 and 12." Clarification was requested in Amendment B, however, since neither of these claims specifically recite storing the primary selection command in a computer memory at each attendee. However, no clarification was provided. Many other dependent claims are also independently allowable. For the sake of brevity, the rejections of other dependent claims are not specifically discussed herein. Reference is made, however, to Amendment B for further detail on the same.

C. §112 and 101 Rejections

The Final Action included a newly presented §101 rejection of claims 20 and 21, and newly presented §112 rejections of various dependent claims. These rejections can be overcome in a straightforward manner through amendment of the claims to correct typographical errors. Such rejections have not been addressed herein above, and such amendment can be made at an appropriate time following Panel consideration of the present Request.


D. Conclusion

Applicant asks that this pre-appeal review request be sustained, and the application allowed. As no sufficient rejections have been established, the five-year pendency of this application should be ended with the issuance of notice of allowance.

Respectfully submitted,

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